CHAI CHOON HON

v.

KETUA POLIS DAERAH, KAMPAR & ANOR.

SUPREME COURT, PULAU PINANG
ABDUL HAMID OMAR ACTING LP
MOHD. AZMI SCJ
EUSOFFE ABDOOLCADER SCJ
[CIVIL APPEAL NO. 11 of 1985]
8 APRIL 1986

CIVIL PROCEDURE: *Condition restricting the number of speakers at an assembly - Whether such restriction valid - Section 27(2) of Police Act 1967.*

The essential issue for determination in this appeal was the validity of a condition restricting the number of speakers at an assembly for which a licence was sought by the appellant from the 1st respondent as the licensing authority under the provisions of s. 27(2) of the Police Act 1967 ("the Act").

The High Court held that the condition restricting the number of speakers to 7 was valid. The appellant appealed.

Held:

[1] There was no valid reason for the restriction imposed on the number of speakers within the time limit granted in the licence.

[2] Further this particular condition was unreasonable in the circumstances as the police had the means to deal with any infringement of the time frame specified in the licence under the provisions of s. 27 of the Act.

[Appeal allowed with costs.]

Case referred to:
Merdeka University Berhad v. Government of Malaysia [1981] CLJ (Rep) 191

Legislation referred to:
Federal Constitution, art. 10(1)(a)
Police Act 1967, ss. 27(2), (3), (4), (6), (8)

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondents - T. Selventhiranathan; SFC

JUDGMENT

Eusoffe Abdoolcader SCJ:

The essential issue for determination in this appeal is the validity of a condition restricting the number of speakers at an assembly for which a licence was sought by the appellant from the first respondent as the licensing authority under the provisions of s. 27(2) of the Police Act 1967 ('the Act').

Now for the background against which this point arises: The appellant as the Secretary of the Kampong Baru, Malim Nawar branch of the Democratic Action Party applied on 3 August 1984 to the first respondent under s. 27(2) of the Act for a licence to hold a Democratic Action Party solidarity dinner and lion dance at the grounds of Tokong Lian Fah Meow

from 5.00 p.m. to 11.30 p.m. on 11 September 1984. The first respondent issued the requisite licence but imposed 7 conditions, two of which (but partially in the case of one of them) the appellant seeks to impugn in the instant proceedings instituted by him for declarations to the effect that they are unconstitutional, null and void and of no effect in that they abridge the right of freedom of speech guaranteed under Article 10(1)(a) of the Constitution of Malaysia. One of the conditions in question restricted the number of speakers at the dinner to 7 only and part of the other forbade the speeches to touch on political issues. Annuar bin Dato' Zainal Abidin J, after hearing evidence and submissions adjudged on 13 December 1984 the latter condition pertaining to speeches touching on political issues to be an unreasonable restriction in violation of the right of the freedom of speech but held the former restricting the number of speakers to be valid.

Section 27(2) of the Act empowers the first respondent as the licensing authority to grant an application for a licence by any person intending to convene or collect any assembly or meeting or to form a procession in any public place if he is satisfied that the assembly, meeting or procession is not likely to be prejudicial to the interest of the security of the Federation or any part thereof or to excite a disturbance of the peace, and to define the conditions upon which such assembly, meeting or procession is permitted. The question presented in these proceedings in relation to the validity of the condition restricting the number of speakers revolves in our view not on the matter of its constitutionality but rather on its reasonableness *vel non* in the light of the relevant provisions of the Act and the evidence adduced. The condition in question is certainly open to curial scrutiny by way of judicial review, and we need only refer in relation to the principles therefor to the judgment in *Merdeka University Berhad v. Government of Malaysia* [1981] CLJ (Rep) 191 (at p. 360).

The first respondent gave evidence to the effect that he imposed the condition restricting the number of speakers to 7 because of the time factor and the fact that he would have had to send his men to be present near the scene to ensure that there would be no breach of the peace, and added that there was no other reason. He went on to say that he considered that the dinner would last only until 8.00 p.m. or 9.00 p.m. and then only would the speeches start, and he 'concluded', to quote him, that each speaker would speak for half-an-hour and that as a result the speeches would go on till late at night. We can see no justification in the light of this evidence for the imposition of this restriction as to the number of speakers or that there was any ground for the first respondent to assume that without imposing this restriction the matter of security would be affected or that a disturbance of the peace would be excited. There was a specific time limit stipulated in the application for the licence, namely, 5.00 p.m. to 11.30 p.m., and the licence was in fact issued for that period. If the time limit had been breached, then it was open to the police to exercise their powers and take the necessary action under the provisions of subsections (3), (4), (6) and (8) of s. 27 of the Act. The first respondent was only speculating as to what might happen, and on the logic of his explanation for the reason for the imposition of the restriction in question, he might as well have restricted the number of speakers to one only and no more on the speculative hypothesis that he might be unduly prolix and periphrastic.

In the premises we find that there does not appear to have been any valid reason for the restriction imposed on the number of speakers within the time limit granted in the licence, and we find this particular condition unreasonable in the circumstances as the police had the means to deal with any infringement of the time frame specified in the licence under the provisions of s. 27 of the Act.

We accordingly at the conclusion of argument allowed this appeal with costs and declared that the condition restricting the number of speakers to 7 was unreasonable. The deposit in Court lodged by way of security will be paid out to the appellant.

Also found at [1986] 2 CLJ 10